

HON. MR. JUSTICE MIDDLETON. NOVEMBER 27TH, 1913.

## ETOBICOKE v. ONTARIO BRICK PAVING CO.

5 O. W. N. 356.

*Nuisance—Blasting by Quarry-owners—Danger to Public—Necessity of Method used—Independent Expert—Report of—Modified Injunction—Liberty to Apply—Costs.*

MIDDLETON, J., in an action to restrain the owners of a quarry from continuing a nuisance in the form of reckless blasting, granted an injunction restraining the use of the quarry in such a manner as would cause a nuisance, operation of the quarry, however, in the manner pointed out to the Court by an independent expert appointed by the Court, not to be considered a nuisance.

Leave reserved to either party to apply for further order.

Action brought by the municipality of the township of Etobicoke, by the public school section number 3 Etobicoke, by a private individual, and by the Attorney-General who at the trial was added as a plaintiff, to restrain defendants from committing a nuisance in the operation of a shale quarry. Tried at Toronto 23rd June, 1913.

The quarry in question is situated in approximately the centre of a parcel of land owned by the defendant. The public school is in the same block, and the Lambton Road passes immediately to the west of the quarry property.

W. N. Tilley, and J. D. Montgomery, for the plaintiffs.

G. H. Kilmer, K.C., and H. H. Davis, for the defendant.

HON. MR. JUSTICE MIDDLETON:—At the trial I was satisfied that on a good many occasions the defendants' servants had somewhat recklessly used an unnecessary quantity of explosives, and that the blast had frequently been of such violence as to unreasonably interfere with the rights of those living near the property.

As usual in cases of this kind there was some slight tendency to exaggerate the inconvenience, and in some instances a tendency to magnify the possible danger, arising no doubt to some extent from a nervous condition; yet, after making all possible allowances I was satisfied that a real grievance did exist; at the same time I thought that all the matters affording a substantial ground for complaint arose from explosions that were entirely unauthorised or quite unnecessary for the due working of the quarry.